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April 17, 2008

**VIA FACSIMILE**

United States District Court  
 Chambers of Harold Baer, Jr.  
 500 Pearl Street  
 New York, NY 10007

**USDS SDNY  
 DOCUMENT  
 ELECTRONICALLY FILED  
 DOC #: 4/23/08  
 DATE FILED: 4/23/08**

Attn: Honorable Judge Baer

Re: Adonna Frometa v. Mario E. Diaz-Diaz & All American Haulers & Recycling  
 Date of Loss: 2/14/2007  
 Case No.: 07 CV 6372  
 Our File No.: 01502.00009

Dear Judge Baer:

Pursuant to your request during our telephone conference April 15, 2008, defendants counsel are vehemently opposed to producing the personal automobile insurance policy of the defendant Mario Diaz-Diaz, as it is in no way applicable in the instant case.

The following facts are undisputed: On December 4, 2007, Defendant Mario E. Diaz-Diaz testified that he was employed as a garbage truck driver by All American Hauling Recycling. At the time of the accident on February 14, 2007, Defendant Diaz-Diaz was driving a sanitation truck owned by All American Haulers Recycling, with his employer's permission and consent.

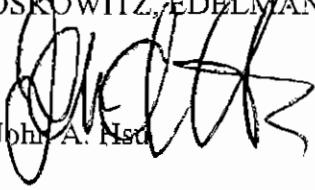
Furthermore, Defendant Diaz-Diaz testified that on February 14, 2007, he did not own a vehicle, however, his wife owned a vehicle and she procured the insurance. (See Defendant's Deposition Transcript Enclosed Pages 9, lines 24-25, and page 10, lines 1-17.) Defendant Diaz-Diaz is a resident of New Jersey, therefore New Jersey law would govern the applicability of a contract purchased for personal automobile liability insurance for a New Jersey registered vehicle. Under N.J. Stat. § 17:28-1.1, insuring for loss resulting from liability imposed by law for bodily injury or death must arise out of the ownership, maintenance or use of a motor vehicle. Therefore, the insurance follows the vehicle not the driver. Since Defendant Diaz-Diaz was driving his employer's vehicle when the accident occurred, the insurance policy purchased on his wife's personal automobile is not applicable in the instant case and obviously therefore, would not provide coverage.

In addition, N.J. Stat. §17:28-1.1(c) does not allow stacking of insurance coverage to increase the limits of coverage available, even if multiple insurance policies were applicable. In the instant matter, Defendants were insured through Carolina Casualty Insurance Company for \$1,000,000, therefore there is no issue with respect to coverage. Plaintiff's counsel's fishing expedition is unfounded and unsupported, as such, defendants request that the Court deny plaintiff's request.

Thank you for your time and consideration. We look forward to hearing from you.

Very truly yours,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

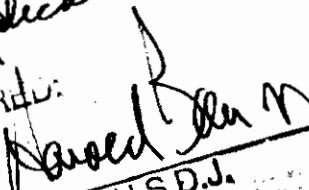
  
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Cc:

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With due deference to your  
vehement opposition, the  
Marvin Dion Diay personnel  
policy or letter styled  
the policy for his wife as  
which provides coverage  
for him will be produced.  
There is no hardship &  
the [ ] statute is harsh &  
model of clarity & thus it may  
be appropriate that the policy  
is applicable.

SO ORDERED:

  
Harold Baer, Jr.

Date: 4/23/08

Endorsement:

With due deference to your "vehement opposition" the Mario Diaz Diaz personal policy or letter styled the policy for his wife's car which provides coverage for him will be produced. There is no hardship and the New Jersey statute is hardly a model of clarity and thus it may be arguable that the policy is applicable.